

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

**TEXAS RSA 1 LIMITED PARTNERSHIP
DBA XIT WIRELESS**

**Petition for Waiver of the Section
54.307(c)(1) Applicable to the Line Count
Submission Applicable to Interstate
Common Line Support**

CC Docket No. 96-45

To: Chief, Wireline Competition Bureau

PETITION FOR WAIVER

Texas RSA 1 Limited Partnership, dba XIT Wireless ("XIT Wireless" or the "Company"), pursuant to Section 1.3 of the Rules of the Federal Communications Commission (the "Commission" or the "FCC"),¹ hereby requests a waiver of the July 31, 2007 line count filing deadline found in Section 54.307(c)(1).² This waiver is required in order for the Universal Service Administrative Company ("USAC") to accept the Company's August 16, 2007 Form 525 line count submission that will, in turn, permit XIT Wireless to receive uninterrupted Interstate Common Line Support ("ICLS") for the entire July 1, 2007 through June 30, 2008 period. XIT Wireless respectfully submits that good cause exists for a grant of this waiver. As demonstrated herein, the circumstances surrounding the missed July 31, 2007 line count submission deadline were unexpected even with the reasonable exercise of manage diligence and oversight, and the

¹ See 47 C.F.R. § 1.3.

² See 47 C.F.R. § 54.307(c)(1) ("A competitive eligible telecommunications carrier must submit the data required pursuant to paragraph (b) of this section according to the schedule. (1) No later than July 31st of each year, submit data as of December 31st of the previous calendar year;").

Company has established additional internal checks and balances to ensure that missed filing deadlines should not occur in the future. Moreover, the Company understands that no party would be harmed by this filing as XIT Wireless' forecasted ICLS disbursements have been included by USAC for ICLS sizing purposes. Thus, a grant of this request would ensure that XIT Wireless receives proper levels of ICLS disbursements, a result that is consistent with the underlying reasoning for disbursement of federal Universal Service Fund ("USF") to entities in the first instance – the provision, maintenance and upgrading of facilities and services for which that USF is intended.³ Accordingly, for the reasons stated herein, a grant of the Company's request for waiver of the July 31st line count filing deadline that directs USAC to accept the Company's August 16, 2007 – the date that the information was electronically submitted to USAC -- will serve the public interest.

I. BACKGROUND

XIT Wireless is a Competitive Eligible Telecommunications Carrier ("CETC") operating in rural portions of the Panhandle of Texas.⁴ The Company's USAC Service Provider ID is 143000779, and its Study Area Code is 449031.

As a CETC, XIT Wireless provides its wireless service to approximately 500 customers in its rural service areas of Dallam, Hartley and Sherman counties. XIT Wireless has already made substantial investment in facilities to provide competitive wireless services to its

³ See 47 U.S.C. § 254(e).

⁴ Attached hereto are the declarations of Darrell F. Dennis, General Manager of XIT Wireless. See Attachment A.

communities and will continue its efforts along these lines in 2007-2008. These plans were made in recognition of what could be the anticipated receipt of the federal USF.

As USAC's records will reflect, the Company has made on a timely basis all necessary federal USF related filings since its designation as a CETC in 2005 by the Texas Public Utilities Commission in Case No. 31738. In fact, and by way of example, on June 12, 2007, XIT Wireless executed and transmitted its annual ICLS certification to USAC with USAC indicating that such annual certification was received on June 15, 2007. *See* Attachment B. Thus, but for the unanticipated circumstances noted below regarding its July 31st line count information, XIT Wireless is otherwise eligible to receive ICLS disbursements for the entire year period from July 1, 2007 though June 30, 2008.

Prior to the July 31, 2007 line count submission, the Company had utilized the services of an employee with over twenty-six (26) years of experience in order to complete and file the necessary Form 525 line count submissions. In the Spring of this year, that employee provided two (2) weeks notice with respect to her plans to leave the Company. As part of the transition required to migrate this employee's responsibilities to others, the Company's Management (the "Management") selected another qualified accounting individual that would then complete the necessary Form 525 reports, and that individual was then trained by the employee who was leaving. Throughout this process, Management was informed by the new individual that she understood the importance of the timeliness of the filing requirements regarding the federal USF, and consistent with her past duties and work, she took her new role and responsibility seriously.

Recognizing that the July 31st filing was approaching, Management made periodic requests of the individual regarding the status of the July 31, 2007 line count submission and that

it would be made on a timely basis. The individual acknowledged the need for the filing and assured management that all filings with a July 31st deadline would be met. Toward the end of July, however, this individual announced with one (1) week's notice that she was leaving the Company to pursue a teaching position. The Company's Management once again received assurance from this individual that all end-of-month filings would be made on a timely basis.

In light of the circumstances surrounding the events at the end of July, Management directed its now-designated federal USF reporting employees to undertake a review of the end of July filings that were to have been made. This review uncovered, for the first time on August 6, 2007, that the Company's July 31st line count information had not been submitted to USAC as Management had planned, and in good faith understood, would occur. Learning of this fact, Management directed that the July 31, 2007 line count be finalized and filed immediately. The filing was finalized and filed, although out of an abundance of caution additional time was required to verify the customer line count information back to December 31, 2006. Once verified for accuracy and completeness, the Form 525 line count submission was completed and transmitted via email to USAC on August 16, 2007. The electronic submission was also overnighted via Federal Express to USAC with delivery to it on August 17, 2007.

The Company's Management misunderstood, however, the ramifications of the July 31st deadline for the filing of the line count information, believing that the filing it made on August 16, 2007 would still be accepted and therefore enable XIT Wireless to receive its ICLS disbursements for the entire period covered by its June 2007 ICLS certification (including the 4th quarter of 2007). However, with the receipt of USAC High Cost Remittance Statement in early December, 2007 and the lack of ICLS recovery for the month of October, the Company contacted

its consultant and first learned of its mistake with respect to the effect of the missed deadline association with its August 16, 2007 line count submission. XIT Wireless was also informed that no ICLS disbursements would be received for the entire 4th quarter 2007, an amount that is estimated to be approximately \$82,116 (the “4th Quarter ICLS Amount”). The Company promptly sought advice of counsel and now files this waiver as USAC had indicated that the 4th Quarter ICLS Amount would not be disbursed to XIT Wireless absent a grant of this request by the Commission.⁵

II. A GRANT OF THIS PETITION SERVES THE PUBLIC INTEREST

Pursuant to Section 1.3 of the Commission’s Rules, the Commission may grant a waiver of the application of any of its rules for “good cause shown.”⁶ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.⁷ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.⁸ Waiver of the

⁵ The Company understands from USAC that the Company’s email submission on September 26, 2007 (overnighted copy received by USAC on September 28, 2007) of its September, 2007 line count information will allow it to receive ICLS for the first quarter 2008. However, if that information is incorrect, additional ICLS disbursements to XIT Wireless in excess of the 4th Quarter ICLS Amount will not be forthcoming, and thus exacerbate the impacts of the loss of federal USF to the Company. Likewise, the Company also understands from USAC that, in light of its September 2007 line count submission, the Company’s anticipated federal USF disbursements for the first quarter of 2008 associated with High Cost Loop, Local Switching Support and Safety Net Additive will not be affected. However, and as with its ICLS, if USAC’s information is incorrect, additional USF impacts will be experienced by the Company. Accordingly, XIT Wireless reserves its right to update this petition should USAC’s information be found to be incorrect. In any event, however, a prompt grant of this waiver request by the Commission will ensure that the Company will receive all of its federal USF including its ICLS for the full year – July 1, 2007 through June 30, 2008.

⁶ 47 C.F.R. §1.3.

⁷ See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (“*Northeast Cellular*”).

⁸ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

Commission's rules is therefore appropriate if special circumstances warrant a deviation from the general rule, and if such deviation will serve the public interest.

XIT Wireless respectfully submits that these factors apply to the circumstances confronting it and the effect that will be experienced absent an expedited grant of this request. As the facts demonstrate, XIT Wireless was not negligent or careless in relying on the measures that it had put in place to ensure continuation of the federal USF-related submissions required of it, nor was the Company forgetful of its obligation to make the July 31st line count filing. Rather, the Company's Management continued its oversight of the filing process and, in good faith reliance on prior conduct of the individual responsible for the filing, had no reason to believe that the necessary Form 525 line count filing would not be made prior to July 31, 2007.

When this reliance was found to be mistaken, complicated by the departure of the responsible individual, XIT Wireless took the necessary steps to make the appropriate filing based on its then (albeit mistaken) understanding of the ramifications of not complying with the timing requirements of USAC and Section 54.307(c)(1). Once the additional misunderstanding regarding the impact of a missed Section 54.307(c)(1) deadline was understood by the Company, XIT Wireless diligently pursued the filing of this waiver request. To avoid similar situations, the Company has now changed its practice to use either overnight delivery service or hand-delivery of its future ICLS submissions, and enacted oversight requirements that require the necessary filings to be finalized and subject to Management review fourteen (14) days prior to the submission's deadline. Moreover, the Company has now put in place a process where all federal USF-related filing deadlines will be monitored by an individual within the Company's executive offices, and not simply the department responsible for the filing.

In light of the unanticipated events surrounding the missed filing, coupled with the remedial measures that XIT Wireless has taken, waiver of Section 54.307(c)(1) July 31st deadline and acceptance of the August 16, 2007 line count submission as if filed as of July 31, 2007 would serve the public interest and, therefore, the Company respectfully requests that this waiver be granted promptly.⁹ XIT Wireless understands very well the importance of timely data submissions by entities like it, and had previously made such submissions. While the Company fully accepts the responsibility for the late receipt of the July 31st line count submission, strict application of the July 31st line count submission date would be contrary to the public interest as it would reduce the federal USF disbursements available to XIT Wireless, which could then be used for purposes of the planned upgrade of the system. XIT Wireless misunderstood the impact of its untimely line count submission of August 16, 2007 until it was alerted of it through the receipt in early December of USF disbursement summary from USAC. Once that was understood, the Company acted with diligence to submit this waiver to the Commission.

Under these circumstances, the waiver of Section 54.307(c)(1) is reasonable and in the public interest. Absent such waiver, the purpose of the federal USF disbursements that a CETC can expect to receive – the “provision, maintenance and upgrading of facilities and services for which the support is intended”¹⁰ – would be frustrated should XIT Wireless *not* receive the 4th Quarter ICLS Amount. Moreover, the Company understands that no party would be harmed by

⁹ In circumstances analogous to those experienced by XIT Wireless, the Commission has already determined that departmental reorganizations associated with one of the largest local exchange carriers – Verizon Communications, Inc. – justified a prompt grant of a waiver of the filing deadline of line counts reports. *See In the Matter of Federal-State Joint Board on Universal Service, Verizon Communications, Inc. Petition for Waiver of Section 54.802(a) of the Commission’s Rules, Order*, CC Docket No. 96-45, DA 06-1861, released September 12, 2006.

¹⁰ 47 U.S.C. § 254(e).

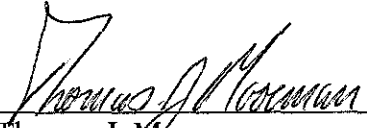
this filing as XIT Wireless' forecasted ICLS disbursements have been included by USAC for sizing purposes. Thus, there should be no significant impact on contributor obligations regarding the fund.

Accordingly, XIT Wireless respectfully requests that the Commission grant this request and direct USAC to accept the Company's August 16, 2007 line count submission as if filed by the Section 51.307(c)(1) July 31, 2007 deadline.

Respectfully submitted,

Texas RSA 1 Limited Partnership
dba XIT Wireless

By:


Thomas J. Moorman
Woods & Aitken LLP
2154 Wisconsin Ave, N.W. Suite 200
Washington, D.C. 20007
Tel. (202) 944-9500
Fax (202) 944-9501

Its Attorney

December 21, 2007

ATTACHMENT A

DECLARATION

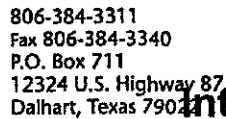
I, Darrell F. Dennis, General Manager of Texas RSA 1 Limited Partnership dba XIT Wireless (the "Company"), do hereby declare under penalties of perjury that I have read the foregoing "Petition for Waiver" and the factual information contained therein regarding the Company is true and accurate to the best of my knowledge, information, and belief.

Darrell F. Dennis

Date: 12/21/2007

Darrell F. Dennis
General Manager

ATTACHMENT B



ICLS

Wireless Internet DSL Long Distance Residential Business Voice Mail TV Cable